UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED
2008 FEB 12 PM 12:28
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

Rogelio BENITEZ-Garcia,

Defendant

Magistrate Docket No.

'08 MJ 0405

COMPLAINT FOR VIOLATION OF:

Title 8, U.S.C., Section 1326
Deported Alien Found in the United States

The undersigned complainant, being duly sworn, states:

On or about **February 10, 2008** within the Southern District of California, defendant, **Rogelio BENITEZ-Garcia,** an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

SIGNATURE OF COMPLAINANT
James Trombley
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS **12th** DAY OF **FEBRUARY 2008**

Anthony J. Battaglia
UNITED STATES MAGISTRATE JUDGE

SLF

CONTINUATION OF COMPLAINT:
Rogelio BENITEZ-Garcia

PROBABLE CAUSE STATEMENT

On February 10, 2008, Border Patrol Agent M. Villalobos responded to a call from the Infrared Scope Operator that he had observed two individuals in an area known as "Echo Gate". This area is approximately 500 yards west of the San Ysidro, California Port of Entry and approximately 75 yards north of the United States/Mexico International Boundary. Upon arriving in the area Agent Villalobos discovered two individuals attempting to conceal themselves. Agent Villalobos approached the two subjects and identified himself as a Border Patrol Agent and then performed an Immigration inspection. Both subjects, including one later identified as the defendant **Rogelio BENITEZ-Garcia**, admitted to being citizens and nationals of Mexico without the proper immigration documents that would allow them to be or remain in the United States legally. Both individuals were arrested at approximately 10:30 p.m. and transported to the Imperial Beach Border Patrol Station for processing.

Routine record checks of the defendant revealed a criminal and immigration history. The defendant's record was determined by a comparison of his criminal record and the defendant's current fingerprint card. Official immigration records of the Department of Homeland Security revealed the defendant was previously deported to **Mexico** on or about **January 29, 2008.** These same records show that the defendant has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.

The defendant was advised of his Miranda Rights, which he stated he understood and was willing to answer questions without having an attorney present. The defendant again freely admitted to being a citizen and national of Mexico without any immigration documents that would allow him to be or remain in the United States legally. The defendant stated that he was heading to Los Angeles, California.